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Single Bench

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH
AT BILASPUR

W.P.NO. 5681 / 2005

Petitioner :

Hari Shankar Lahare
S/o Shri Shambudayal Lahare,
Aged about 39 years,
Sarpanch Gram Panchayat
Samesar, R/o Village Samesar,
Post – Nandal,
Tehsil – Navagarh,
Dist : Durg-(C.G.)

Versus

Respondents :

1. State of Chhattisgarh
Through The Secretary,
Department of Panchayat and Social
Welfare, Mantralaya Raipur,
Dist : Raipur-(C.G.)

5830/05
D. No.
Presented by Shri Santosh Bharan
dated 10.11.05

2. Rajkumar Didore
S/o Shri Padumlal Didore, 30 years,
R/o Village – Cheetapar,
Post & Tehsil – Navagarh,
Dist : Durg-(C.G.)

3. Girwar Singh
S/o Shri Thanwar, 61 years
R/o Village–Kapri, Tehsil–Navagarh,
Dist : Durg-(C.G.)

4. Dauram Banjare
S/o Milauram Banjare, 50 years,
R/o Village–Kapri, Tehsil–Navagarh,
Dist : Durg-(C.G.)

5. Dinesh Kumar
S/o Shri Puhoop Das Satnami,
Aged about 37 years,
R/o Village – Cheetapar,
Tehsil–Navagarh,
Dist : Durg-(C.G.)

10/11/05

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6. Deepak Kumar
S/o Shri Banshilal Banjare, 30 yrs
R/o Village–Kapri, Tehsil–Navagarh,
Dist : Durg-(C.G.)

7. Maniram
S/o Shankar Jogi, 32 years,
R/o Village – Cheetapur,
Tehsil – Navagarh,
Dist : Durg-(C.G.)

8. Milau Ram,
S/o Santuram Sahu, 50 years,
R/o Village – Samesar,
Tehsil – Navagarh,
Dist : Durg-(C.G.)

9. Ramdas Manikpuri
S/o Guhadas Manikpuri, 35 years
R/o Village – Samesar
Tehsil – Navagarh,
Dist : Durg-(C.G.)

10. Ramratan
S/o Bhakla Chaturvedi, 32 years,
R/o Village – Cheetapur
Tehsil – Navagarh,
Dist : Durg-(C.G.)

11. Shiv Kumar
S/o Shri Sundardas Vaishnav,
Aged about 35 years,
R/o Village – Samesar,
Tehsil – Navagarh,
Dist : Durg-(C.G.)

12. Shri M.L.Gupta
Sub Divisional Officer Bemetra cum
Returning Officer, Block – Navagarh,
Tehsil – Navagarh, Dist : Durg-(C.G.)

13. Shri D.S.Ratre
Instructing Officer, ITI Bemetra,
Dist : Durg-(C.G.)

14. Shri B.R.Soni
Instructing Officer, ITI Bemetra,
Dist : Durg-(C.G.)

15. The Specified Officer Cum
Sub Divisional Officer, Bemetra,
Dist : Durg-(C.G.)

WRIT PETITION UNDER ARTICLE 226 / 227 OF THE CONSTITUTION OF INDIA

1. Particul

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 5681 of 2005

Petitioner: Hari Shankar Lahare

Versus

Respondents: State of Chhatisgarh & others

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri**.

Shri Prafull Bharat, Advocate for the petitioner.

Shri Sushil Dubey, Govt. Advocate for the respondents No. 1 &15.

Shri Rajeev Shrivastava, Advocate for the respondent No. 2.

None for the other respondents.

O R D E R

(6th December, 2006)

The following order of the Court was passed by **Satish K. Agnihotri, J.**

1. The petitioner is an elected Sarpanch, in an election held on 15.1.2005 from Gram Panchayat Samesar, Tahsil - Navagarh, District- Durg. The respondent No.2 filed an election petition before the Specified Officer i.e. Sub Divisional Officer, Bemetera, District- Durg.

2. The present petitioner raised objection before the Specified Officer that the election petitioner did not comply with the mandatory requirement of Rules 3 and 8 of the Chhattisgarh Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995 (for short 'the Rules, 1995'). The Specified Officer rejected the objection of the present petitioner without framing preliminary issue and considering the case of the petitioner.

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3. Being aggrieved the present petitioner filed W.P.No. 4010/2005 challenging the order dated 8.8.2005 passed by the Specified Officer. This Court, on 5.9.2005 after hearing learned counsel for the parties passed the following order:-

> *"After going through the application and the impugned order, this writ petition is disposed of with an observation that the petitioner herein is entitled to raise an objection in return and learned Specified Officer to frame issue on that point and decide the same in accordance with law as preliminary issue. However, it is made clear that the order impugned shall not come in way while deciding the issue regarding objection raised by the petitioner."*

4. Pursuant to the order dated 5.9.2005, passed by this Court in W.P.No. 4010/2005, the Specified Officer framed the issues on 27.10.2005 to the effect asto whether the election petition was maintainable under Rules 3 and 8 of the Rules, 1995 read with Section 122 of the Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 and whether it is maintainable and whether recounting can be directed and result can be declared, as under : -

> " धारा 122 पंचायत राज अधिनियम एवं नियम 3
>
> तथा 8 के तहत आवेदन पत्र प्रतिपालनीय है या नहीं ।
>
> प्रतिपालनीय है तो पुनर्गणना किया जाए,
>
> पुनर्गणना पश्चात परिणाम की घोषणा किया जावे ।"

5. Being aggrieved, the petitioner has filed the present petition seeking a direction to quash the order dated 27.10.2005 passed by the Specified Officer.

6. Shri Prafull Bharat, learned counsel appearing for the petitioner submits that the issues, as directed by this Court vide order dated 5.9.2005 passed in W. P. No. 4010/2005 were not framed

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as preliminary issue and the Specified Officer while framing issues had directed to recount the votes and declare the result, thereof, which is contrary to the letter and spirit of the order dated 5.9.2005 passed by this Court. Learned counsel further submits that the recounting cannot be ordered in this manner at the time of framing issues, which is contrary to the provisions of law.

7. Shri Rajeev Shrivastava, learned counsel appearing for the respondent No.2 fairly submits that the issues may not be properly worded but the order dated 27.10.2005 clearly indicates that there was no order of recounting of votes and declaration of result thereof. That was a part of the issue No. 2, framed therein. Learned counsel further pointed out the order dated 14.11.2005, wherein the application of the petitioner to the extent that the issues framed on 27.10.2005 was not in accordance with the direction of the High Court's order, was rejected by the Specified Officer. The matter was fixed for recording of evidence to decide the preliminary issue with regard to the maintainability of the petition.

8. Having heard learned counsel for the parties and having perused the records, petition and return, appended thereto. It appears that the order dated 27.10.2005 and 14.11.2005 are vague and ambiguous. The order dated 27.10.2005, which according to learned counsel for the respondent No.2, is framing of issues and no direction to recounting of votes and declaring result thereof was passed, is ambiguous. The issues have been framed in such a manner which gives an impression, as if, the order to recount has been passed. The order dated 14.11.2005 is also not clear as

to whether the recording of evidence was ordered to decide the preliminary issue with regard to the maintainability of the election petition or otherwise.

9. Be that as it may, in the facts and circumstances of the case, the Specified Officer is directed to comply with the order dated 5.9.2005 passed by this Court in W. P. No. 4010/2005 in its letter and spirit and frame clear issues, specifying the preliminary issue and issue on merit. The preliminary issue has to be considered and decided first as per the order passed by this Court in W. P. No. 4010/2005 and thereafter if need be, the case may be considered and decided on merits.

10. With the above direction this petition is disposed of. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur